

CS881033

INTERGOVERNMENTAL AGREEMENT
AGUA FRIA

IGA - FCD 87003

82-33

This Agreement is between the Flood Control District of Maricopa County, a municipal corporation and political subdivision of the State of Arizona (hereinafter called DISTRICT), and the State of Arizona, acting by and through the Arizona Department of Transportation (hereinafter called STATE).

This Agreement shall become effective as of the date it is filed with the Secretary of State pursuant to Arizona Revised Statutes § 11-952, as amended. DATE FILED WITH THE SECRETARY OF STATE April 8, 1988.

STATUTORY AUTHORIZATION

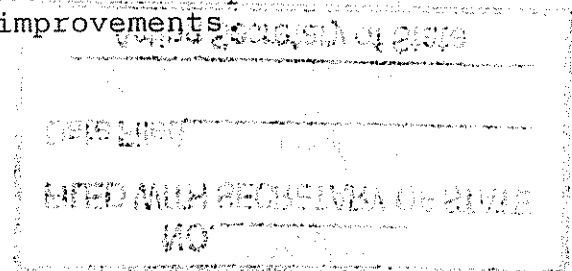
1. The DISTRICT is empowered by Arizona Revised Statutes § 48-3603 to enter into this Agreement.
2. The STATE is empowered by Arizona Revised Statutes §§ 28-108 and 11-951 through 954 to enter into this Agreement and by Section 48-3621 to grant right of way in, under, along or across State highway right of way for flood control purposes, and the Director of the Arizona Department of Transportation has delegated to the undersigned his authorization to execute this Agreement on behalf of the STATE.

BACKGROUND

3. The DISTRICT is involved in a major flood control project along the Agua Fria River. The DISTRICT is constructing a channel and levees along the Agua Fria River from north of Indian School Road to Buckeye Road. The DISTRICT is also the local sponsor of the Phoenix, Arizona and Vicinity (including New River) Flood Control Project being constructed by the U. S. Corps of Engineers, and the District must acquire flowage easements in the Agua Fria River as well as perform other local sponsor responsibilities.
4. These flood control improvements in the Agua Fria River will cross the STATE's rights of way for Interstate 10 and State Route 85 (Buckeye Road) as well as other State rights of way, as shown on Exhibit "A" attached.

PURPOSES

5. The purposes of this Agreement are to establish adequate rights of way for the DISTRICT's flood control improvements and to identify responsibilities for operation and maintenance of these flood control improvements.



TERMS OF AGREEMENT

6. The STATE hereby agrees to allow the DISTRICT a perpetual permit to occasionally overflow, flood and submerge (and to maintain open space and mosquito control) the land on Parcels A1, B1, C, D, E, F, G, H, I, J1, J3, and J4, as shown on Exhibit "A". On Parcel A2 the DISTRICT may utilize the drainage channel for flood waters occasionally.
7. The STATE shall allow the DISTRICT the right to enter upon Parcels A1 and A2, as shown on Exhibit "A", except that the DISTRICT may not enter these Parcels from Interstate 10. The DISTRICT shall be responsible for the maintenance of the dike and ditch on STATE right of way north of the south toe of the north dike between Station 0+00 and Station 30+35 and the ditch between the West Papago Channel and the new McDowell Road Bridge, M.C.H.C. #68105, as shown in red on Exhibit "B". Exhibit "B" is the DISTRICT's Contract No FCD 85-16, Sheets 12 and 13 of the construction plans.
8. On Parcel A2, as shown on Exhibit "A", the STATE will be responsible only for the maintenance of the West Papago Channel to the south toe of the north dike, as shown in Exhibit "B". The DISTRICT will assume maintenance beginning at Station 30+35.
9. The STATE shall allow the DISTRICT the right to enter upon Parcels B1, C, D, E, F, G, H, I, J1, J3, and J4, as shown on Exhibit "A", to construct, reconstruct, excavate, operate and maintain the channel, dikes and appurtenant maintenance roads. The DISTRICT will be responsible for the operation and maintenance of the flood control structures and appurtenant maintenance roads within the STATE's rights of way at its own cost.
10. The STATE will only be responsible for the maintenance of the highway bridges, superstructure, wingwalls, the approaches to the bridges, and the Highway drainage within the STATE's rights of way, as shown on Exhibit "A".
11. The DISTRICT shall design and construct to STATE standards, at its own cost, those certain structures and appurtenances required by DISTRICT to convey drainage waters beneath said highway structure and upon other rights of way of the STATE in the Agua Fria River. On its own behalf, the DISTRICT will engage a contractor for the purpose of constructing said structures and appurtenances.
12. The DISTRICT agrees to replace and modify the existing drainage outlet in Parcel D. The drainage comes from the STATE's maintenance yard which is immediately to the west of Parcel D. The DISTRICT will maintain the culvert and flap gate.

13. For Parcels A1, B1, D, E, F, H, I, J1, J3, and J4 and the portion of Parcels A2, C, and G which the DISTRICT has agreed to operate and maintain, the DISTRICT, to the extent permitted by law, agrees to indemnify and save harmless the STATE, or any of its departments, agencies, officers or employees, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by an activity, condition or event arising out of the performance or nonperformance of any of the provisions of this Agreement. The STATE shall in all instances be indemnified against all liability, losses or damages of any nature for or on account of any injuries to or death of persons or damages to or destruction of property arising out of or in any way connected with the performance or nonperformance of this Agreement, except such injury or damages as shall have been occasioned by the negligence of the STATE. The above cost of damages incurred by the STATE or any of its departments, agencies, officers or employees shall include reasonable attorney's fees, costs and/or expenses incurred in the event of any such claim, whether arising out of litigation or otherwise.
14. For the portion of Parcels A2, C, and G that the State has agreed to maintain, the STATE, to the extent permitted by law, agrees to indemnify and save harmless the DISTRICT or any of its departments, agencies, officers or employees, from and against all loss, expense, damage or claim of any nature whatsoever which is caused by an activity, condition or event arising out of the performance or nonperformance of any of the provisions of this Agreement. The ~~STATE~~ shall in all instances be indemnified against all liability, losses or damages of any nature for or on account of any injuries to or death of persons or damages to or destruction of property arising out of or in any way connected with the performance or nonperformance of this Agreement, except such injury or damages as shall have been occasioned by the negligence of the DISTRICT. The above cost of damages incurred by the DISTRICT or any of its departments, agencies, officers or employees shall include reasonable attorney's fees, costs and/or expenses incurred in the event of any such claim, whether arising out of litigation or otherwise.
15. The STATE may, if necessary due to an emergency, repair, reconstruct or maintain said flood control structures and DISTRICT shall bear all costs related to such work.
16. This Agreement shall remain in full force and effect until completion of said construction project as aforesaid; provided; however, that this Agreement may be canceled at any time prior to commencement of construction upon 30 days' written notice to the other party; however, agreements herein relating to maintenance and liability shall be in effect so long as the roadways are part of the State highway system unless modified by written agreement of both parties.

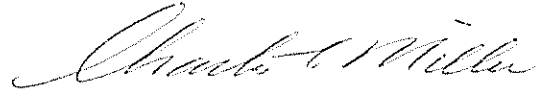
17. All parties acknowledge that this Agreement is subject to cancellation by the Governor pursuant to the provisions of Section 38-511 Arizona Revised Statutes.
18. In the event of any controversy which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Section 12-1518 (B) and (C) of Arizona Revised Statutes as amended.
19. Attached hereto and incorporated by reference is a copy of State's resolution authorizing entry into this Agreement, a Certification of the Clerk of the Board stating that the Board of Directors of the Flood Control District authorized entry into this Agreement, and a copy of the Attorney General's Intergovernmental Determination.

STATE OF ARIZONA
ARIZONA DEPARTMENT OF
TRANSPORTATION

By 
Chief Deputy State Engineer

RESOLUTION

Be it resolved on this date, January 7, 1955, I, CHARLES L. MILLER, the below undersigned Director, Arizona Department of Transportation, have determined that it is to be to the advantage of the State of Arizona that the Department of Transportation, acting by and through the Highways Division and the Flood Control District of Maricopa County, enter into the Intergovernmental Agreement for the purpose of granting right of way in, under, along or across State highway right of way for flood control purposes.



CHARLES L. MILLER, Director
Arizona Department of Transportation

STATE OF ARIZONA
DEPARTMENT OF TRANSPORTATION

By: _____

STATE OF ARIZONA)
) ss
County of Maricopa)

On this, the 7th day of January, 19 88, before me, the undersigned Notary Public, personally appeared A. J. Judd, the Chief Deputy State Engineer, of the Arizona Department of Transportation, who acknowledged before me that he executed the within and foregoing instrument on behalf of such governmental entity, for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Jeannette Suttley
Notary Public

My commission expires:

My Commission Expires Nov. 19, 1988

FLOOD CONTROL DISTRICT OF MARICOPA COUNTY

Recommended by:

D. E. Sagramoso 2-17-88
D. E. Sagramoso, P.E. Date
Chief Engineer and General Manager

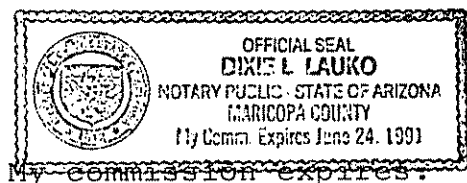
Approved and Accepted:

By Tom Finestone
Chairman, Board of Directors
MAR 21 1988

STATE OF ARIZONA)
) ss
County of Maricopa)

On this, the 21st day of March, 1988, before me, the undersigned Notary Public, personally appeared Tom Finestone, the Chairman of the Board of Directors of the Flood Control District of Maricopa County who acknowledged before me that he executed the within and foregoing instrument on behalf of such governmental entity for the purposes herein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Dixie L. Lauko
Notary Public

6/24/91

This Intergovernmental Agreement has been reviewed pursuant to Arizona Revised Statutes § 11-952, as amended, by the undersigned General Counsel, who has determined that it is proper form and within the powers and authority granted to the Flood Control District of Maricopa County under the laws of the State of Arizona.

[Signature] 2-22-88
General Counsel Date



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert K. Corbin

INTERGOVERNMENTAL AGREEMENT

DETERMINATION

A. G. Contract No. KR 88-0008, is an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED this 30th day of December, 1987.

ROBERT K. CORBIN
Attorney General

Albert Morgan
Assistant Attorney General
Transportation Division